

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In the matter of the complaint of Piccininni, Inc.  
as owner of a certain 1979 41' fishing vessel:  
known as the DAYBREAK III for exoneration  
from or limitation of liability.

x 08 Civ. 5521 (SHS) (RLE)

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DATE FILED: 7/22/08

**STIPULATION & ORDER STAYING LIMITATION OF  
LIABILITY ACTION AND LIFTING ORDER  
RESTRANING PROSECUTION OF ACTION BY DANIEL  
POLANCO AGAINST PLAINTIFF IN LIMITATION**

**IT IS HEREBY STIPULATED AND AGREED** by and among the attorneys for  
PICCININNI, INC. ("PICCININNI") and DANIEL POLANCO ("POLANCO") as follows:

**WHEREAS**, by Complaint for exoneration from or limitation of liability filed  
before this Court on June 19, 2008 (the "Complaint") and accompanying documents,  
PICCININNI has invoked the admiralty and maritime jurisdiction of this Court pursuant to 46  
U.S.C. §§ 46 U.S.C. 30501 *et seq.* and has sought exoneration from or limitation of liability  
concerning an incident occurring on August 18, 2006 involving POLANCO; and

**WHEREAS**, on or about April 2, 2008, POLANCO filed a personal injury action  
demanding a jury trial in Supreme Court, Bronx County, captioned "Daniel Polanco, Plaintiff,  
against Piccininni, Inc. and Peter Piccininni, Defendants," Index Number 302654/08, pursuant to  
the "saving to suitors" clause, 28 U.S.C. § 1333 concerning an incident occurring on August 18,  
2006 involving POLANCO;

**NOW**, upon the consent of all attorneys appearing herein, it is hereby

**STIPULATED AND AGREED AS FOLLOWS:**

1. POLANCO will not seek in the Supreme Court, Bronx County action or any other action he may commence, any judgment or ruling on the issue of PICCININNI's right to limitation of liability and the determination of the amount of the fund to which it may be limited, which are reserved exclusively for this Court.

2. POLANCO concedes that PICCININNI is entitled to and has the right to litigate all issues relating to limitation of liability under 46 U.S.C. §§ 30501 *et seq.* in this Court, but POLANCO specifically reserves his right to deny and contest in this Court all assertions and allegations that PICCININNI has made in the Complaint filed herein.

3. POLANCO waives any claim of *res judicata* relevant to the issue of limitation of liability based on any judgment that the Supreme Court, Bronx County, or any other court, may render in such action.

4. POLANCO, while not stipulating to or agreeing to \$75,000 as the value of the vessel "Daybreak III" and her pending freight, hereby stipulates that if there is a judgment or recovery in the action commenced in Supreme Court, Bronx County or any other venue in excess of \$75,000, whether against PICCININNI or any other liable party or parties or potential co-defendants who may make cross claims, or claims for indemnification and/or contribution against PICCININNI, that in no event will POLANCO seek to enforce or execute that excess judgment or recovery insofar as it may expose PICCININNI to liability in excess of \$75,000 pending the adjudication of the Complaint in this Court.

5. In consideration of the foregoing, the restraint, stay and injunction issued by this Court in paragraph 5 of its Order filed June 19, 2008 is hereby vacated to the extent of allowing POLANCO to proceed with the action he has commenced in Supreme Court, Bronx County, captioned "Daniel Polanco, Plaintiff, against Piccininni, Inc. and Peter Piccininni,

Defendants," Index Number 302654/08, including trial before a jury, and to obtain a judgment in said Bronx County action if so warranted.

6. The July 30, 2008 deadline established by this Court in paragraph 3 of its Order filed June 19, 2008 for the filing of claims and answers before this Court is hereby extended *sine die* solely with respect to any claim and/or answer which may be filed in this action by POLANCO.

7. This case is placed on the Suspense Calendar of this Court, to be reopened upon letter application to the Court in the event same becomes necessary, at which time POLANCO shall be permitted to file an answer and/or claim in this case within thirty (30) days from such reopening, with PICCININNI agreeing to waive any statute of limitations and/or laches defense against POLANCO in the within action only.

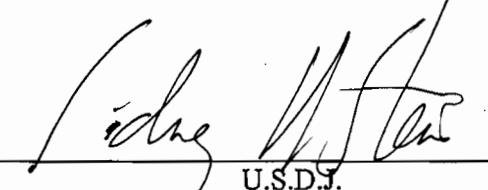
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7/22/08  
SO ORDERED:

  
U.S.D.J.